

AMENDED IN ASSEMBLY JULY 12, 2007

AMENDED IN ASSEMBLY JUNE 13, 2007

AMENDED IN SENATE APRIL 23, 2007

AMENDED IN SENATE MARCH 19, 2007

AMENDED IN SENATE FEBRUARY 14, 2007

## **SENATE BILL**

**No. 33**

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### **Introduced by Senator Simitian**

(Principal coauthor: Assembly Member Garcia)

(Coauthors: Assembly Members Beall, Horton, Jeffries, Krekorian, and Maze)

December 4, 2006

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An act to amend Sections 12810.3 and 23123 of, and to add Section 23124 to, the Vehicle Code, relating to vehicles.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 33, as amended, Simitian. Vehicles: wireless telephones and mobile service devices.

(1) Under existing law, on and after July 1, 2008, it will be an infraction for any person to drive a motor vehicle while using a wireless telephone, unless that telephone is designed and configured to allow hands-free listening and talking operation, and is used in that manner while driving, except as otherwise provided. A violation point is not given for a violation. A violation is punishable by a base fine of \$20 for a first offense and \$50 for each subsequent offense.

This bill, on and after July 1, 2008, would prohibit a person under the age of 18 years from driving a motor vehicle while using a wireless telephone, even if equipped with a hands-free device, or while using a

mobile service device, as defined. The prohibition would not apply to such a person using a wireless telephone or a mobile service device for emergency purposes. By creating a new infraction, the bill would impose a state-mandated local program.

The bill would prohibit a law enforcement officer from stopping a vehicle for the sole purpose of determining whether the driver is violating the above prohibition, but would not prohibit a law enforcement officer from stopping a vehicle for the purpose of determining whether the driver is using a wireless telephone without a hands-free device. The bill would prohibit a violation point from being given for a conviction of violating the above prohibition. A violation would be punishable by a base fine of \$20 for a first offense and \$50 for each subsequent offense.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 12810.3 of the Vehicle Code is amended  
2 to read:  
3 12810.3. (a) Notwithstanding subdivision (f) of Section 12810,  
4 a violation point shall not be given for a conviction of a violation  
5 of subdivision (a) of Section 23123 or subdivision (b) of Section  
6 23124.  
7 (b) This section shall become operative on July 1, 2008.  
8 SEC. 2. Section 23123 of the Vehicle Code, as added by Section  
9 4 of Chapter 290 of the Statutes of 2006, is amended to read:  
10 23123. (a) A person shall not drive a motor vehicle while using  
11 a wireless telephone unless that telephone is specifically designed  
12 and configured to allow hands-free listening and talking, and is  
13 used in that manner while driving.  
14 (b) ~~Notwithstanding subdivision (a) of Section 42001 or any~~  
15 ~~other provision of law, a~~ A violation of this section is an infraction  
16 punishable by a base fine of twenty dollars (\$20) for a first offense  
17 and fifty dollars (\$50) for each subsequent offense.

1 (c) This section does not apply to a person using a wireless  
2 telephone for emergency purposes, including, but not limited to,  
3 an emergency call to a law enforcement agency, health care  
4 provider, fire department, or other emergency services agency or  
5 entity.

6 (d) This section does not apply to an emergency services  
7 professional using a wireless telephone while operating an  
8 authorized emergency vehicle, as defined in Section 165, in the  
9 course and scope of his or her duties.

10 (e) This section does not apply to a person when using a digital  
11 two-way radio that utilizes a wireless telephone that operates by  
12 depressing a push-to-talk feature and does not require immediate  
13 proximity to the ear of the user, and the person is driving one of  
14 the following vehicles:

15 (1) (A) A motor truck, as defined in Section 410, or a truck  
16 tractor, as defined in Section 655, that requires either a commercial  
17 class A or class B driver's license to operate.

18 (B) The exemption under subparagraph (A) does not apply to  
19 a person driving a pickup truck, as defined in Section 471.

20 (2) An implement of husbandry that is listed or described in  
21 Chapter 1 (commencing with Section 36000) of Division 16.

22 (3) A farm vehicle that is exempt from registration and displays  
23 an identification plate as specified in Section 5014 and is listed in  
24 Section 36101.

25 (4) A commercial vehicle, as defined in Section 260, that is  
26 registered to a farmer and driven by the farmer or an employee of  
27 the farmer, and is used in conducting commercial agricultural  
28 operations, including, but not limited to, transporting agricultural  
29 products, farm machinery, or farm supplies to, or from, a farm.

30 (5) A tow truck, as defined in Section 615.

31 (f) This section does not apply to a person driving a schoolbus  
32 or transit vehicle that is subject to Section 23125.

33 (g) This section does not apply to a person while driving a motor  
34 vehicle on private property.

35 (h) This section shall become operative on July 1, 2008, and  
36 shall remain in effect only until July 1, 2011, and, as of July 1,  
37 2011, is repealed.

38 ~~SEC. 2.~~

39 *SEC. 3.* Section 23123 of the Vehicle Code, as added by Section  
40 5 of Chapter 290 of the Statutes of 2006, is amended to read:

23123. (a) A person shall not drive a motor vehicle while using a wireless telephone unless that telephone is specifically designed and configured to allow hands-free listening and talking, and is used in that manner while driving.

(b) A violation of this section is an infraction punishable by a base fine of twenty dollars (\$20) for a first offense and fifty dollars (\$50) for each subsequent offense.

(c) This section does not apply to a person using a wireless telephone for emergency purposes, including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department, or other emergency services agency or entity.

(d) This section does not apply to an emergency services professional using a wireless telephone while operating an authorized emergency vehicle, as defined in Section 165, in the course and scope of his or her duties.

(e) This section does not apply to a person driving a schoolbus or transit vehicle that is subject to Section 23125.

(f) This section does not apply to a person while driving a motor vehicle on private property.

(g) This section shall become operative on July 1, 2011.

~~SEC. 3.~~

*SEC. 4.* Section 23124 is added to the Vehicle Code, to read:

23124. (a) This section applies to a person under the age of 18 years.

(b) Notwithstanding Section 23123, a person described in subdivision (a) shall not drive a motor vehicle while using a wireless telephone, even if equipped with a hands-free device, or while using a mobile service device.

(c) A violation of this section is an infraction punishable by a base fine of twenty dollars (\$20) for a first offense and fifty dollars (\$50) for each subsequent offense.

(d) A law enforcement officer shall not stop a vehicle for the sole purpose of determining whether the driver is violating subdivision (b).

(e) Subdivision (d) does not prohibit a law enforcement officer from stopping a vehicle for a violation of Section 23123.

(f) This section does not apply to a person using a wireless telephone or a mobile service device for emergency purposes, including, but not limited to, an emergency call to a law

1 enforcement agency, health care provider, fire department, or other  
2 emergency services agency or entity.

3 (g) For the purposes of this section, “mobile service device”  
4 includes, but is not limited to, a broadband personal communication  
5 device, specialized mobile radio device, handheld device or laptop  
6 computer with mobile data access, pager, and two-way messaging  
7 device.

8 (h) This section shall become operative on July 1, 2008.

9 ~~SEC. 4.~~

10 *SEC. 5.* No reimbursement is required by this act pursuant to  
11 Section 6 of Article XIII B of the California Constitution because  
12 the only costs that may be incurred by a local agency or school  
13 district will be incurred because this act creates a new crime or  
14 infraction, eliminates a crime or infraction, or changes the penalty  
15 for a crime or infraction, within the meaning of Section 17556 of  
16 the Government Code, or changes the definition of a crime within  
17 the meaning of Section 6 of Article XIII B of the California  
18 Constitution.